U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24369700

Date: FEB. 28, 2023

Appeal of Los Angeles, California Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his U.S. citizen mother under section 320 of the Act, 8 U.S.C. § 1341.

The Director of the Los Angeles, California Field Office denied the application, concluding that the Applicant had not provided requested evidence to show that he had resided in the United States in the legal and physical custody of his U.S. citizen mother pursuant to a lawful admission for permanent residence at some point during the period before he turned 18 years of age, as required by section 320 of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

The Applicant seeks a Certificate of Citizenship indicating that he derived U.S. citizenship from his mother. The record reflects that the Applicant was born in Thailand in [redacted] 2004. The Applicant answered certain questions in part 2 of his Form N-600 to assert that his parents were not married when he was born but that they did marry after his birth. The Applicant submitted a Certificate of Naturalization showing his mother became a naturalized U.S. citizen in May 2013. There is no information to indicate that the Applicant's father is a U.S. citizen, and the Applicant seeks approval of the Form N-600 solely through his U.S. citizen mother.

The Director denied the Applicant's Form N-600, finding that the Applicant had not established that he is eligible to derive U.S. citizenship under current section 320 of the Act because he had not provided requested evidence in the form of: his parents' marriage certificate; his parents' divorce decree; and any other court document showing that his mother had legal custody of the Applicant. Without the requested evidence, the Director concluded that the Applicant had not satisfied his burden to show that he had resided in the United States as a lawful permanent resident in the legal and physical

custody of his U.S. citizen mother at some point after his parents had divorced and before he turned 18 years of age in [redacted] 2022.

On appeal, the Applicant asserts that his Form N-600 was erroneously completed to reflect that his parents married after his birth. He claims that his mother remarried someone other than his father. He resubmits his birth certificate, his mother's Certificate of Naturalization reflecting that she was married at the time of her 2013 naturalization, and a copy of his mother's 2020 Internal Revenue Service Form 1040, U.S. Individual Income Tax Return, which lists the Applicant as her dependent.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales,* 401 F.3d 1069, 1075 (9th Cir. 2005). The Applicant seeks to establish eligibility under the requirements of section 320 of the Act. The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended former section 320 of the Act and repealed former section 321 of the Act, 8 U.S.C. § 1432, and applies to individuals such as the Applicant, who were born after the effective date of the CCA.

Section 320 of the Act, as amended by the CCA, provides, in pertinent part, that:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
>
> (2) The child is under the age of eighteen years.
>
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Moreover, the Applicant must meet the definition of a "child" in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), which requires, in pertinent part, that during the relevant timeframe he must be an unmarried person under twenty-one years of age.

Because the Applicant was born abroad, he is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires,* 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the record demonstrate that the Applicant's claim is "probably true," based on the specific facts of his case. *See Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

In order to show that he derived U.S. citizenship through his naturalized U.S. citizen mother under section 320 of the Act, the Applicant must establish that at some point before his 18th birthday in [redacted] 2022, he was residing in the United States in the legal and physical custody of his naturalized

U.S. citizen mother, pursuant to his lawful admission for permanent resident status. Sections 320(a)(2) and (3) of the Act.

The regulations implementing section 320 of the Act provide that legal custody "refers to the responsibility for and authority over a child." *See* 8 C.F.R. § 320.1 (defining "legal custody"). When the child's parents are married to each other, legal custody is presumed in the case of a biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated). 8 C.F.R. § 320.1(1)(i). In the event of divorced or legally separated parents, a U.S. citizen parent will be presumed to have legal custody for CCA purposes where there has been "an award of primary care, control, and maintenance" of the minor child to the parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. 8 C.F.R. § 320.1(2). USCIS will also presume that a U.S. citizen parent has legal custody of a child, absent evidence to the contrary, in the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent. 8 C.F.R. § 320.1(1)(iii).

In this case, the Applicant has not provided required evidence to show that he resided in the United States in the *legal* custody of his U.S. citizen mother at some point while under the age of 18 years, pursuant to his admission as a lawful permanent resident, consistent with the requirements of section 320(a)(2), (3) of the Act and 8 C.F.R. § 320.1. On his Form N-600, the Applicant indicated that his parents were not married when he was born, but that they did marry after his birth. He initially included his mother's 2013 Certificate of Naturalization showing that she claimed to be married at the time of naturalization, and his birth certificate, which lacks information about his parents marital status. As discussed by the Director, the Applicant did not provide initial evidence regarding his parents' claimed marriages to each other, as required by the Form N-600 instructions and the relevant regulations at 8 C.F.R. § 320.3(a), (b)(iii); nor did he submit such evidence in response to the Director's request for such evidence. Although he claims on appeal that his Form N-600 was erroneously completed and appears to be asserting that his parents never married, he does not explain why he completed and signed the Form N-600 attesting that his parents married each other after his birth. Moreover, apart from his general assertion on appeal that his parents did not marry, he does not submit the requested marriage and divorce documents to clarify his parents' marriage and divorce history on appeal. Without the required evidence of his U.S. citizen mother's marital history, it is not possible to determine whether the Applicant resided in the United States in her "legal custody," as defined at 8 C.F.R. § 320.1, at some point during the relevant period between her naturalization in 2013 and the Applicant's 18th birthday in 2020, after his lawful admission to the United States as a permanent resident.[1]

Based on the Applicant's initial claims regarding his parents' marriage to each other and his failure to provide relevant, requested evidence to show that they were not in fact married to each other, as he now claims, the Applicant has not shown that he satisfies current section 320(a)(2) and (3) of the Act requiring that he have resided in the United States in the *legal* custody of his U.S. citizen mother at

[1] In any future filings, if the Applicant establishes that his parents were not married to each other, then he must show that his paternity was established by legitimation, as required to meet the definition of "child" born to unmarried parents at section 101(c) of the Act.

some point on or after the date of her naturalization in May 2013 and prior to his 18th birthday, pursuant to his lawful admission as a permanent resident.

As this basis for denial is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the issues as to whether he separately established that he resided in the United States in the *physical* custody of his U.S. citizen mother at some point on or after the date of her naturalization in May 2013 and prior to his 18th birthday in 2022, pursuant to his lawful admission as a permanent resident. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

IV. CONCLUSION

The Applicant has not shown that he derived citizenship under section 320 of the Act as he has not established that he resided in the United States in the legal custody of his U.S. citizen parent pursuant to an admission as a lawful permanent resident prior to his 18th birthday. As such, the Applicant is ineligible for a Certificate of Citizenship and his Form N-600 remains denied.

ORDER: The appeal is dismissed.